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NO.00-1710

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2000

ZACHARY WITMAN, Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA, Respondent

On Petition for a Writ of Certiorari
to the Superior Court of Pennsylvania

REPLY TO RESPONDENT'S REASONS FOR OPPOSING THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

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TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....3

PETITIONER'S RESPONSE.....4

CONCLUSION.....6

TABLE OF AUTHORITIES

Cases Cited

Flippo v. West Virginia, 528 U.S. 11, 120 S.Ct. 7, 145 L.Ed.2d 16 (1999) 4

Mincey v. Arizona, 437 U.S. 385, 95 S.Ct. 2408, 57 L.Ed.2d 290 (1978) 4

PETITIONER'S RESPONSE

Respondent is incorrect in claiming that Pennsylvania's Superior Court did not premise its decision on the basis of a "crime scene exception." (Respondent's Brief in Opposition at 4). In fact, Pennsylvania's Superior Court specifically held that ". . . an exception to warrant requirement must exist where defendant had summoned police and set the tone for the initial investigation." (Appendix "B" at 1.20).

Indeed, Pennsylvania's Superior Court, mindful of this Court's decisions in *Flippo v. West Virginia*, 528 U.S. 11, 120 S.Ct. 7, 145 L.Ed. 2d 16 (1999) and *Mincey v. Arizona*, 437 U.S. 385, 95 S.Ct. 2408, 57 L.Ed.2d 290 (1978), merely chose not to use the words "crime scene exception." Instead, the Superior Court wrote that summoning the police "set the tone" for an investigation, permitting what was, in effect, a crime scene exception search.

This Court can not countenance a "crime scene exception" search, simply because a state court has given that very search a different label.

Furthermore, Respondent's argument that this Court should not " . . . disturb a factual decision by a lower court . . ." (Respondent's Brief in Opposition at 8) ignores the fact that Pennsylvania's Superior Court did exactly what Respondent says an appellate court should not do: It arbitrarily arrogated to itself the fact-finding role previously and properly performed by the trial court, the Honorable John C. Uhler, in the Court of Common Pleas of York County, Pennsylvania. Judge Uhler, the fact-finder, found that Amelia Sue Witman, petitioner's mother, had not consented to a search of her home.

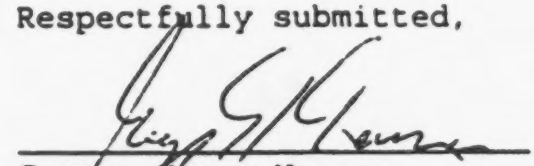
Pennsylvania's Superior Court, a court which is obligated to accept the findings-of-fact of the lower court, unless they are not supported by sufficient evidence on the record - - and Respondent has not argued, nor could it reasonably argue, that there was not sufficient evidence on the record to support the trial court's finding of no consent by petitioner's mother - - improperly substituted its factual findings for the facts properly determined by the lower court.

Clearly, this court should grant Zachary Witman's petition for writ of certiorari, or in the alternative, reverse, per curium, the Superior Court's reversal of the lower court's order as to sixteen of the twenty-two items originally ordered suppressed by the trial court.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, petitioner prays that this Honorable Court grant his petition for writ of certiorari to review the order of the Superior Court of Pennsylvania, or in the alternative, reverse per curium the Superior Court's order denying suppression, in part,

Respectfully submitted,



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